IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Crl.Rev.Pet.No. 2973 of 2007()

CRA.17/2007 of ADDL. SESSIONS COURT (ADHOC), THODUPUZHA
ST.1138/2005 of JUDL. MAGISTRATE OF FIRST CLASS, PEERUMEDU

.....

REVN. PETITIONER: ACCUSED/APPELLANT

JOSSY VARGHESE, S/O.VARGHESE,
KALLUPURATHU VEETTIL, CHAKKUPALAM KARA,
UDUMBANCHOLA.

BY ADV. SRI.B.RAMAN PILLAI
SRI.R.ANIL
SRI.RAJU RADHAKRISHNAN

RESPONDENTS: COMPLAINANT & STATE

---

1. THRESIAMMA P.THOMAS @ THRESIAMMA THOMAS
W/O.SEBASTIAN THOMAS PUTHUPARAMBIL VEETTIL,
ETTUMANOOR KARA, KOTTAYAM
(JOHN VILLA, ATTAPPALAM KARA, KUMALY, PEERMADE).

2. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2973 OF 2007

Dated this the 16th day of August, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. No.1138/05 on the file of the J.F.C.M.-II, Peermade challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision

Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. Sri. B.Raman Pillai, the learned counsel for the revision petitioner, contended that the case of the complainant in the present prosecution is that a sum of Rs.1,50,000/- (Rupees one lakh and fifty thousand only) was borrowed on 25.7.98 and Ext.P1 cheque was issued, but the very same complainant, who is a lady, had a totally different version in the two civil suits and pre-suit notices evidenced by the defence documents. Her version before the civil court was that a sum of Rs.3,50,000/- (Rupees three lakhs and fifty thousand only) consisting of Rs.2,00,000/- (Rupees two lakhs only) and Rs.1,50,000/- (Rupees one lakh and fifty thousand only) was borrowed on 6.10.99 and Rs.1,50,000/- (Rupees one lakh and fifty thousand only) pertains to the very same cheque for which she has also secured a decree from the civil court. In the face of such discrepant versions, her case should have been rejected in toto. I am afraid, that I cannot agree. In the first place, the judgment and decree of the civil court have virtually no relevance to a prosecution under section 138 of the Negotiable Instruments Act, 1881. Secondly, the prosecution in the present

case is on the basis of Ext.P1 cheque as per which a sum of Rs.1,50,000/- was borrowed on 25.7.98. There is a presumption under section 139 of the N.I. Act that the cheque was issued in discharge of a debt or liability. It is for the person who contends otherwise to rebut the prosecution. The courts below have recorded the finding of guilt after an evaluation of the oral and documentary evidence in the case. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

5. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357(3) Cr.P.C. a sum of

Rs.1,50,000/- (Rupees one lakh and fifty thousand only) within four months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

aks